

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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VERONICA C. HOSKING

: CHAPTER 13  
: Case No: 14-35174  
:  
: 355 Main Street,  
: Poughkeepsie, NY 12601  
:  
: February 24, 2015  
: Time: 9:00 am  
:  
:  
-----:

**TRANSCRIPT OF NOTICE OF PRE-TRIAL HEARING  
BEFORE THE HONORABLE CECELIA G. MORRIS  
UNITED STATES BANKRUPTCY JUDGE**

APPEARANCES

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BY: U.S. BANK NATIONAL ASSOCIATION  
RMAC TRUST, SERIES 13-00001T

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I N D E X

02/24/2015

1 JUDGE MORRIS: 14-35174, Veronica Hosking.

2 State your name and affiliation.

3 STUART KOSSAR: Stuart Kossar, Knuckles,  
4 Komosinski and Elliott on behalf of the secure  
5 creditor. Good morning.

6 JUDGE MORRIS: Good morning.

7 STACEY BYFORD: Good morning, Your Honor, Stacey  
8 Byford on behalf of Ms. Hosking.

9 STUART KOSSAR: Your Honor, this is on for a  
10 pretrial conference with connection with tomorrow's  
11 (indiscernible) hearing.

12 JUDGE MORRIS: Right.

13 STUART KOSSAR: I've submitted a proposed joint  
14 order with the company exhibits. I believe that the  
15 only issue that could be resolved would be whether or  
16 not these guidelines would be reviewed in camera or  
17 not.

18 JUDGE MORRIS: Okay. And have you read my  
19 anthracite (ph.) decision?

20 STUART KOSSAR: Yes, (indiscernible).

21 JUDGE MORRIS: Okay, just so you know.

22 STUART KOSSAR: (Indiscernible), Judge.

23 JUDGE MORRIS: The burden's on you and I read  
24 your documents. Did you want to add anything to it?

25 STUART KOSSAR: Well, Judge, I respectfully

1 submit an affidavit stating how these guidelines are  
2 confidential proprietary and are essentially what  
3 makes the what makes my clients -- how they evaluate  
4 loans and modifications and as (indiscernible) to  
5 that, that is sensitive commercial information that  
6 requires protection because disclosure of that could  
7 be used to the detriment by third parties as well as  
8 other competitors.

9 JUDGE MORRIS: Okay. I hear that. That's a  
10 little over broad for me. You can sit down. I'll  
11 rule. The U.S. Bank seeks permission to have its  
12 investor guidelines reviewed in camera at the February  
13 25<sup>th</sup> evidentiary hearing under 107(b). U.S. bank  
14 argues that RMAC Trust Series 2013 T is entitled to  
15 have its investor guidelines protected pursuant to  
16 11USC 107(b) as trade secrets.

17 Section 107(b) states that the bankruptcy court  
18 shall protect an entity with respect to a trade secret  
19 or confidential research development or commercial  
20 information. The moving party bears the burden of  
21 demonstrating that the information it is seeking to  
22 protect from public viewing with both commercial and  
23 confidential. In (indiscernible) M Corp 466BR234,  
24 Southern District of New York 2012, Emery Northwest  
25 Airlines Corp (ph.) 363BR704, the Southern District of

1 New York 2007. Good cause is not a statutory  
2 requirement for granting the request of relief under  
3 107(b), Video Software Dealers Association versus  
4 Orion Pictures 21F3rd 24 Second Circuit 1994.

5 Instead, the code mandates that a bankruptcy  
6 court grant the requested relief if the information is  
7 confidential, commercial information, again Orion  
8 Pictures. Congress uses the word "are" (ph.) to  
9 distinguish between trade secrets and commercial  
10 information in Section 107. Thus, commercial  
11 information need not rise to the level of a trade  
12 secret to qualify protection under Section 107(b), in  
13 Borders Group 463BR42 Southern District of New York  
14 2011.

15 The commercial information exception is not  
16 intended to offer a safe harbor for those who crave  
17 privacy or secrecy for its own sake. Instead, it  
18 protects parties from the release of information that  
19 would cause them harm or give competitors an unfair  
20 advantage, anthracite 492BR at 178. This Court has  
21 previously held that redaction is preferable to  
22 wholesale sealing and that when protection is required  
23 under 107 the Court has discretion in deciding how to  
24 protect the information as 107 does not mandate  
25 sealing only protection. Again, I refer to

1 anthracite.

2 U.S. Bank asked that its entirety of its  
3 guidelines be provided in camera without demonstrating  
4 that each page contains a trade secret or commercial  
5 information. Thus, U.S. Bank has failed to meet the  
6 threshold preventing documents from public disclosure  
7 under 107.

8 Moreover, the status report filed by counsel for  
9 U.S. Bank on December the 15, 2014, which states  
10 debtor's loan modification, was denied as she could  
11 not provide a "good faith down payment" and I'm  
12 quoting from the letter. Thus, the investor has a  
13 requirement for a down payment is already part of the  
14 public record. The entire investor guidelines do not  
15 need to be publicly filed on the Court's docket.

16 The portion of the guideline that require a down  
17 payment must be provided to the Court in open court.  
18 Showing a document that says a down payment is due is  
19 no more damaging than saying policy exists aloud in  
20 open court, which has already been done. This motion  
21 is denied. U.S. Bank is ordered to produce the  
22 portion of the investor's guidelines that show the  
23 down payment requirement in open court and is  
24 witnessed to show -- and its witness should be  
25 prepared to testify to be cross examined on the same.

1 Motion denied. Submit an order.

2 STACEY BYFORD: Your Honor, if I may, I'm a  
3 little bit at a loss. We have this evidentiary  
4 hearing tomorrow morning at 9:00.

5 JUDGE MORRIS: Right, I'm here.

6 STACEY BYFORD: As I understand your ruling, I'm  
7 permitted to cross-examine their witness --

8 JUDGE MORRIS: Yes.

9 STACEY BYFORD: -- regarding guidelines that I  
10 haven't even seen yet.

11 JUDGE MORRIS: You haven't -- you haven't  
12 produced them?

13 STUART KOSSAR: No, because you haven't  
14 requested. I have them here because we had been  
15 requesting to produce them in camera.

16 JUDGE MORRIS: And, and you haven't gone over and  
17 shown what the actual reason for all this is all  
18 about? --

19 STUART KOSSAR: Well, --

20 JUDGE MORRIS: It's all about a deadline. You  
21 always had to give them to her, always.

22 STACEY BYFORD: Your Honor --

23 JUDGE MORRIS: The only thing was whether you had  
24 to file it.

25 STUART KOSSAR: Well, I wasn't aware of that.

1 That's the first time we've had a request for that.

2 STACEY BYFORD: Your Honor stated on the record  
3 at the last hearing --

4 JUDGE MORRIS: Yeah.

5 STACEY BYFORD -- they had to be provided to me  
6 and --

7 STUART KOSSAR: Right. I'll provide them.

8 STACEY BYFORD: -- being provided tomorrow  
9 morning is really --

10 JUDGE MORRIS: Oh, it's ridiculous. Oh, that's  
11 only -- it's ridiculous. Pay costs for today. That's  
12 why we have a hearing but you had to give her  
13 everything.

14 STUART KOSSAR: Judge, it's a very extremely  
15 brief guideline that would -- would take --

16 JUDGE MORRIS: But why didn't you give it to her  
17 so she had time to prepare? She's in court today.  
18 She's got to be here again tomorrow morning. How many  
19 miles does she live from this courthouse? Come on.  
20 It's minus 13 degrees outside. It was anyway. I've  
21 got to take a break.

22 THE CLERK: All right. You may be seated.

23 JUDGE MORRIS: I don't see how we can go forward  
24 with the hearing tomorrow, so we won't.

25 STUART KOSSAR: Judge, I would only suggest I can



1 provide the -- the guidelines right now. It's  
2 literally a quarter of a page.

3 JUDGE MORRIS: She has the opportunity to also  
4 call for a deposition of the people that wrote it,  
5 anybody else. She hasn't had time to study it. And  
6 Ms. Byford is now in court all day long as she should  
7 be. She then has to deal with her clients that are  
8 here today. She's got -- as all of you know that are  
9 lawyers, you've got a (indiscernible).

10 I can't even say it. God, that's the second word  
11 today I can't say. And so today, she's concentrating  
12 on everything she has. Then tomorrow she's supposed  
13 to be here at 9:00 a.m. to cross-examine someone that  
14 she doesn't have these guidelines to have even given  
15 interrogatories to. You were told to give her the  
16 guidelines. I said that. Then you come in and file  
17 this. This is for public consumption. She was  
18 entitled to them when I made that ruling. And so you  
19 expect to just do this from the seat of her pants? I  
20 have seen Ms. Byford before. I think she's a good  
21 lawyer. That's ridiculous. You can't do that and  
22 you're only as good as your last case, so as we all  
23 know. Are you giving her the entire guidelines?

24 STUART KOSSAR: I can provide it right now.

25 JUDGE MORRIS: Well, hand them over to her. And

1 then you have to provide to me the -- that's it?

2 STUART KOSSAR: That's it.

3 JUDGE MORRIS: They're going public. Well, but  
4 she should have the opportunity to cross-examine  
5 anyone in a deposition before having to come here.  
6 She had -- this is not what discovery's all about.  
7 Yes, Ms. Byford.

8 STACEY BYFORD: This is not a guideline, Your  
9 Honor. If you want to --

10 JUDGE MORRIS: Let's see it. Put it up there.  
11 Let's see it.

12 STACEY BYFORD: Did you want me to put it up  
13 there?

14 JUDGE MORRIS: Yeah, it doesn't look like a  
15 guideline to me. Where does it say 25% on there?  
16 That's a guideline?

17 STUART KOSSAR: Those are the guidelines, Judge.

18 STACEY BYFORD: I wouldn't know how to begin to  
19 cross-examine somebody based on that.

20 JUDGE MORRIS: I wouldn't either. I wouldn't  
21 begin to know what to do.

22 STUART KOSSAR: Those -- those are the  
23 guidelines.

24 JUDGE MORRIS: We're not having a hearing  
25 tomorrow and they're very close to something. I don't

1 know what.

2 STUART KOSSAR: Well, Judge --

3 JUDGE MORRIS: I'm gonna rule against them right  
4 now for lack of good faith.

5 STUART KOSSAR: Well, Judge, we can surely  
6 proceed to discovery if that's what --

7 JUDGE MORRIS: No, I'm gonna rule against your  
8 client for lack of good faith. If that's the  
9 guideline and they said, they had to have a down  
10 payment, that's a lack of good faith.

11 STUART KOSSAR: But, Judge, the purpose of --

12 JUDGE MORRIS: There is no but. There is no  
13 guideline, in other words. In other words, they're  
14 making it up as they go along.

15 STUART KOSSAR: No, if I can testify as to how  
16 the guidelines (indiscernible) should be developed how  
17 they're implemented. That's the purpose of a hearing  
18 so that we could provide --

19 THE JUDGE: No, the purpose of the hearing was to  
20 show me in the guidelines where they had to have a 25%  
21 down payment because that's why they turned them down.  
22 And they said that in the letter and they lied to this  
23 Court because they said it was a guideline.

24 Now, that is exactly what was said. And there's  
25 no but -- ifs, ands and buts. That's what it said. I

1       have -- I am finding right now that they have not  
2       proceeded in good faith. And because of that, I'm  
3       going off on a deep end right now and I will have to  
4       think about this but I am charging them for the entire  
5       cost of loss mitigation to Ms. Byford and her client  
6       because they did not proceed in good faith.

7               Now, from the very beginning they did not. Now  
8       then, since I'm on a tangent, because I'm really  
9       pissed, because, honestly, my whole world also  
10      revolves around scheduling and if you noted, it was an  
11      early schedule tomorrow because there were a lot of  
12      people that wanted my time and attention, as they  
13      deserve because they are also litigants in this Court.

14             STUART KOSSAR: Judge, I just respectfully  
15      request that my -- my client has provided the  
16      guidelines as requested.

17             JUDGE MORRIS: Absolutely not. I have now seen  
18      them. This is loss mitigation and I can tell you  
19      right now at every single one of these conferences and  
20      at every time we have a debtor here, I think this  
21      Court has proven that we take the creditors at their  
22      word even much more than we do the debtors. We make  
23      the debtors prove things. And then when it comes --  
24      because we really, truly think the creditors are doing  
25      this in good faith and this is a prime example of them

1 not doing it in good faith and you are now painting  
2 all creditors with a dirty brush.

3 And I'm really, honestly -- if you push a little  
4 harder, I'm gonna double the punitives because of what  
5 I'm -- I'm thinking that what I'm going to do now is  
6 start fining your client \$100 a day, \$1000 a day, I  
7 don't know how much, until they proceed in good faith.

8 STUART KOSSAR: Well, Your Honor, if the Court  
9 wishes to do that, I respectfully request that define  
10 how to do that going forward because we provide --

11 JUDGE MORRIS: It is going to be going forward.  
12 You're gonna pay for all the loss mitigation before.  
13 And now then you're gonna start paying until you come  
14 to the table and come to the table with true  
15 guidelines, with what it shows, not some little, silly  
16 piece of paper. Where is the person that made the  
17 decision on this? Have them ready for a deposition,  
18 have them in my Court. I'm not talking about a  
19 deposition on that but a deposition on the guidelines.

20 And if that means you bring in the president of  
21 the bank, you bring in the president of the bank. If  
22 that means you bring in the president of this trust,  
23 you bring in the president of this trust. But you get  
24 her to Ms. Byford first and you let Ms. Byford have  
25 her deposition. You let Ms. Byford have

1       interrogatories with her. And you're gonna be paying  
2       for them.

3               STUART KOSSAR: Judge, I special request lead to  
4       appeal (ph.).

5               JUDGE MORRIS: Go right ahead. But I will not  
6       stay anything on this lead for appeal. Now, I haven't  
7       entered this order yet but I am really, really angry.  
8       Is this a crazy, fake trustee? Do I have a real  
9       trustee here?

10              STUART KOSSAR: We're going to -- we were going  
11       to provide tomorrow with the investor per the Court's  
12       request.

13              JUDGE MORRIS: You're not providing it tomorrow.  
14       You're providing it to her for deposition. And you  
15       would you like a deposition tomorrow? You have no  
16       guidelines to go upon. What would you like to do?

17              STACEY BYFORD: Well, I'd like to see the actual  
18       guidelines?

19              JUDGE MORRIS: Yeah, where are the actual  
20       guidelines?

21              STUART KOSSAR: Those are it.

22              STACEY BYFORD: I don't know. I don't know.

23              JUDGE MORRIS: Those are not guidelines. And I  
24       have a decision out there on lack of good faith.  
25       That's the (indiscernible) decision. Well, I guess we

1       could bring him in. I could put him under oath and  
2       then I could rule against him on good faith because  
3       then I have a record. It's -- I guess it is a him. I  
4       called her a her a while ago. And let him explain the  
5       guidelines or the lack thereof. All right, 9:00  
6       tomorrow morning.

7               STUART KOSSAR: We'll be there.

8               STACEY BYFORD: Thank you, Your Honor.

9               JUDGE MORRIS: Tell him he's pushing lack of good  
10       faith.

11              STUART KOSSAR: I will advise him of that.  
12       Judge, my client is coming from Dallas  
13       (indiscernible).

14              JUDGE MORRIS: So what?

15              STUART KOSSAR: No, I'm just advising you. They  
16       get hit -- they got hit by the snow. But he told me  
17       that he's getting (indiscernible).

18              JUDGE MORRIS: It's gone. The snow is gone in  
19       Dallas. I know that for a fact.

20              STUART KOSSAR: All right, he'll be here  
21       tomorrow, Judge.

22              JUDGE MORRIS: Tell him he's got a hostile judge.

23              STUART KOSSAR: I will advise him.

24       (Whereupon these proceedings were concluded at 11:32

25       a.m.

CERTIFICATION

I, JENNIFER HARPER-GONZALEZ, the assigned transcriber, do hereby certify the foregoing transcript of proceedings before the U.S. Bankruptcy Court, Southern District of New York, on February 24, 2015, on CD, index number from 11:07:42 to 11:32:43; is prepared in full compliance with the current Transcription Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded, and to the best of my ability.



JENNIFER HARPER-GONZALEZ  
Schmieder & Meister, Inc.

May 4, 2015  
Date